23 November 2023

**DECISION**

**RACING VICTORIA**

**and**

**WAYNE WALTERS**

**Date of hearing:** 21 November 2023

**Panel:** Judge John Bowman (Chairperson) and Ms Danielle Hikri.

**Appearances:** Mr Jack Anderson appeared on behalf of the Stewards.

Mr Wayne Walters represented himself.

**Charge:** Australian Rule of Racing (“AR”) 240(2) states:

(2) Subject to subrule (3), if a horse is brought to a racecourse for the purpose of participating in a race and a prohibited substance on Prohibited List A and/or Prohibited List B is detected in a sample taken from the horse prior to or following its running in any race, the trainer and any other person who was in charge of the horse at any relevant time breaches these Australian Rules.

**Particulars of charge:** 1. You are, and were at all relevant times,

a. A Trainer licensed by Racing South Australia.

b. A visiting Trainer in Victoria; and

c. Bound by the Rules of Racing of Racing Victoria.

2. You were at all relevant times the trainer of ‘Fifth Husband’ (the Horse).

3. On 26 December 2022, the Horse was brought to the N’Hill Racecourse and ran in the ‘Azza’s Tyres BM58 Handicap’ (race 2) over 2100 metres (the Race).

4. On 26 December 2022, following the running of the Race, a urine sample (V785681) was taken from the Horse (the Sample).

5. An analysis of the Sample detected the presence of Lignocaine, 3- Hydroxylingnocaine and Norlignocaine.

6. Lignocaine is a prohibited substances pursuant to Division 1 of Part 2 of Schedule 1 (Prohibited list B) of the Australian Rules of Racing

**Plea:** Not Guilty

**DECISION**

Mr Wayne Walters, you have pleaded “Not Guilty” to a charge pursuant to AR 240(2), which charge could be summarised as being that you brought a horse to a racecourse for the purpose of running it in a race and a prohibited substance was detected in a sample taken from it. That prohibited substance was Lignocaine.

The horse trained by you was Fifth Husband, which was participating in Race 2 at Nhill on 26 December 2022. Lignocaine was detected in a post-race urine sample. As stated, Lignocaine is a prohibited substance.

No explanation as to why the horse tested can be found. You are adamant that you did not administer, or cause to be administered, any Lignocaine to Fifth Husband. None was found by the Stewards when inspecting your stables and medicine cabinet. Your usual veterinary surgeon, Dr Stuart Skirving, checked back through his records as far as September 2022, but used no lignocaine in his visits and knew of none being used. The only possible contact raised by you was that your daughter, who, along with your son-in-law, took the horse to the track at Nhill, did hose it down and wipe it with a piece of cloth found there. It was a very hot day.

As explained to you, AR 240(2) is a Rule which operates on the basis of strict liability. Indeed, there is an argument that absolute liability operates. Without being too technical about it, and as explained to you, it is very difficult to avoid liability for a breach of this Rule. Not knowing how the prohibited substance came to show up in a swab does not affect the operation of the Rule.

Your outline of the facts that you did not possess the substance and had no knowledge of how it came to prove positive in a swab is not challenged by the Stewards. We accept your evidence.

However, to use the vernacular, that does not get you off the hook. The horse was brought to the track for the purpose of running in a race. It did so run. A prohibited substance, Lignocaine, was detected in a sample. That, unfortunately for you is effectively the end of the matter, even though you have no knowledge of how the positive return came about, and neither, for that matter, do the Stewards. However, the ingredients of the Rule are all there – the horse was brought to the racecourse for the purpose of running in a race and a post-race swab revealed the presence of the prohibited substance, Lignocaine. We understand your frustration, but, in short, we find the charge proven. We shall hear the parties on the question of penalty.

**PENALTY**

Mr Wayne Walters, on the question of penalty we have come to the following conclusion.

We have already accepted that you have no knowledge as to how the high reading on the positive swab came about. We also note that the reading could be described as being particularly high, being 13 times the legal limit. We also note that you have been a trainer for in excess of fifty years and that, in the last 20 or so years, whilst you certainly do not have an unblemished record, the offences involved are relatively minor. We also take into account that your wife is effectively paralysed from the waist down, is confined to a wheelchair, and you, aged 76 years, are effectively her primary carer.

The fact that you pleaded “Not Guilty” must also be taken into account, although your conduct of the matter was basically to highlight your lack of knowledge as to how the offence occurred. This was not a “Not Guilty” contest in the true sense of the words. However, it means that you do not get the benefit of a guilty plea.

In all the circumstances, we impose a penalty of a fine of $6,000, of which $1,000 is suspended for a period of 24 months. If you commit a relevant offence again during that period, that fine of $1,000 will be activated and imposed.

Finally, Fifth Husband is disqualified from Race 2 at Nhill on 26 December 2022 and the finishing order is amended accordingly.

Mark Howard

Registrar, Victorian Racing Tribunal